



Due Diligence, Provenance Research, and the Acquisition Process at the Museum of Fine Arts, Boston

Victoria Reed

Follow this and additional works at: <https://via.library.depaul.edu/jatip>

Recommended Citation

Victoria Reed, *Due Diligence, Provenance Research, and the Acquisition Process at the Museum of Fine Arts, Boston*, 23 DePaul J. Art, Tech. & Intell. Prop. L. 363 (2013)

Available at: <https://via.library.depaul.edu/jatip/vol23/iss2/4>

This Lead Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Journal of Art, Technology & Intellectual Property Law by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.

DUE DILIGENCE, PROVENANCE RESEARCH, AND THE ACQUISITION PROCESS AT THE MUSEUM OF FINE ARTS, BOSTON

Victoria Reed*

In recent years, museums in Europe and the United States have received and resolved an increasing number of high-profile restitution claims for works of art in their collections. There has been a particular focus on the return of Nazi-looted art and illegally-excavated antiquities, though questions of legal ownership, or title, are not new, and can come up in any area of a museum's holdings, regardless of that museum's size and scope. An institution researching its collection with the goal of resolving long-dormant ownership issues may confront the realization that its objects were subject to theft, looting, or a coercive transfer, either during armed conflict or at any other time. The institution will also need to consider the cultural patrimony legislation of its objects' countries of origin, and clarify how those objects have been exported and imported. There is thus a broad spectrum of issues that can affect a museum's ability to hold legal title to its works of art, which are not limited to Nazi looting and illicit excavation.

The Museum of Fine Arts, Boston (MFA)—one of the leading encyclopedic art museums in the world, boasting over 450,000 objects from varied periods and cultures—has been deeply involved in handling claims for the restitution of cultural property. Since the late 1990s, the MFA has resolved a number of claims for works of art in its collection. Several claims have been resolved in favor of the Museum; others have been resolved in favor of the claimant, either by deaccessioning the object for a return to its rightful owner, or by reaching a financial settlement that allows good title to pass to the Museum. To give some examples of the

* Victoria Reed has been conducting provenance research at the Museum of Fine Arts, Boston, since 2003. In her current position as Curator for Provenance she is responsible for the research and documentation of the Museum's encyclopedic collection, the review of potential acquisitions and loans, and the development of due diligence policies and practice throughout the curatorial division.

far-reaching nature of these resolved claims, the MFA has deaccessioned, or officially removed from its collection: an ancient bronze statuette, which had been stolen from the Musée de la Chartreuse in Douai, France in 1901; a marble torso of *Weary Herakles*, in response to claims that it had been looted from Turkish soil; a medieval embroidery that had been taken from the Diocesan Museum in Trent, Italy, during World War II; thirteen unprovenanced classical antiquities for repatriation to the Republic of Italy; and a 15th-century painting of the *Madonna and Child*, plundered from a home in Warsaw during the 1940s.¹ The MFA's most widely-publicized restitution occurred in 1971, after a small panel painting, optimistically attributed to Raphael, had been brought into the United States by an MFA curator without being declared to U. S. Customs.² It also had not been granted an export license from Italy, and U. S. Customs officials withdrew the painting from the Museum and returned it to the Italian State.³

Recent examples of financial settlements by the MFA include Eglon van der Neer's *Portrait of a Man and Woman in an Interior*, which belonged to Walter Westfeld, a German Jewish art dealer, who gave, sold, or lost the painting after his gallery was forcibly closed in 1936.⁴ The Museum has also reached settlements for four 17th-century Italian tapestries and a painting by Corrado Giaquinto, which were sold in forced auctions in Nazi Germany and Nazi-occupied France, respectively.⁵ In 1992, the MFA

1. For a comprehensive list of the MFA's resolved claims since 1997, see *Ownership Resolutions*, MUSEUM OF FINE ARTS BOS., <http://www.mfa.org/collections/provenance/ownership-resolutions> (last visited Feb. 16, 2013). In several cases, the Museum contacted the claimant with newly-discovered provenance information that allowed a claim to be made.

2. For further discussion on the "Boston Raphael," see KARL E. MEYER, *THE PLUNDERED PAST: THE STORY OF THE ILLEGAL INTERNATIONAL TRAFFIC IN WORKS OF ART* 101-08 (1973).

3. See *id.*

4. Geoff Edgers, *MFA Makes Amends in Probable Plundering*, BOSTON GLOBE, June 27, 2011, at A1; Leah Burrows, *A Master Stroke of Detective Work*, THE JEWISH ADVOCATE, July 15, 2011, at 1.

5. *Nazi-Era Provenance Research*, MUSEUM OF FINE ARTS BOS., www.mfa.org/collections/provenance (last visited Mar. 23, 2013) (discussing the settlements for the tapestries and the painting). See also Press Release, Museum of Fine Arts Bos., Museum of Fine Arts, Boston, Reaches an

settled a claim with Lafayette College after both parties learned that an ancient Egyptian pectoral, or breastplate, purchased by the Museum in 1981, had been stolen from the College's library just a year earlier.⁶

In each of these instances, the Museum faced evidence that it did not—or very probably did not—have clear title to the objects in question. It was, therefore, correct to resolve their status, whether by means of a physical return of the object (i.e. restitution), or a monetary settlement. Notwithstanding the propriety of these decisions, however, it remains the worst-case scenario for the Museum to either deaccession or effectively re-purchase an object because good title was never acquired at the time of an acquisition. Either the collection loses an object, which has been exhibited, conserved, and studied for years, or the Museum is forced to draw upon acquisition funds that could otherwise be used to benefit the collection. This is to say nothing of the resources utilized for research, legal fees, and the packing and shipping of returned objects.

In order to avoid such time-consuming and costly scenarios in our future, it is necessary for the MFA not to repeat the mistakes of our past. As we strive for greater diligence today, these past acquisition mistakes in fact provide our greatest learning tool. We may ask ourselves what precisely went wrong during the process of acquiring these objects, so that we know what to do differently as we build our collection now.

Fortunately, there are some mistakes we are unlikely to repeat. Until recently, it was routine practice in the art trade to ask few if any questions. During much of the twentieth century, curatorial staff and museum administration turned a blind eye to gaps in

Agreement for the Purchase of Four 17th-Century Tapestries Made for the Barberini Palace in Rome (Mar. 25, 2011), *available at* http://www.mfa.org/sites/default/files/MFA_Barberini%20textiles%20press%20release.pdf.

6. *Pectoral*, MUSEUM OF FINE ARTS, BOS., <http://www.mfa.org/collections/object/pectoral-155959> (last visited Feb. 16, 2013). *See also* Carol Vogel, *A Happy Ending: Museum Keeps Stolen Artifact and College Gets Cash*, N.Y. TIMES, Apr. 11, 1992, <http://www.nytimes.com/1992/04/11/arts/a-happy-ending-museum-keeps-stolen-artifact-and-college-gets-cash.html>.

provenance and other red flags, such as the names of known victims and perpetrators of Nazi looting, fanciful ownership histories, or indications of illegal export. Museums failed to ask specific questions about the origins of their purchases and gifts, usually because they were unaware of the various risk factors that could accompany the acquisition of a work of art. For example, when in 1946 the MFA purchased an embroidery that had been stolen from Trent, it almost certainly never occurred to the staff involved that 1946 was a particularly risky time to be buying European art.⁷

Today, ignorance is no excuse, particularly with acquisition guidelines in place from the American Alliance of Museums (“AAM”) and the Association of Art Museum Directors (“AAMD”).⁸ As curators, we know we must check the provenance of potential acquisitions for Nazi-era gaps; we also understand that most antiquities do not emerge miraculously from unknown Swiss private collections. We now have the ability to run works of art through the stolen art database maintained by the Art Loss Register with the click of a mouse.⁹ The internet has created a means for museums to share their collections, including provenance information, rather than guarding this material jealously. Museums are, in short, exercising much greater diligence today than in years past.

With each new acquisition, the MFA requests, assesses, and shares provenance information; but is this enough to ensure we are

7. I have written elsewhere about the embroidery. See Victoria S. Reed, *Il Ricamo di San Vigilio fra Trento e Boston: Ricerche Sulla Provenienza delle Opere D'Arte e Restituzioni Nella Prassi del Museum of Fine Arts*, in *UNA STORIA A RICAMO: LA RICOMPOSIZIONE DI UN RARO CICLO BOEMO DI FINE TRECENTO* 24-33 (Domenica Primerano ed., 2011).

8. AAM and AAMD have issued guidelines on Nazi-era provenance research and on the acquisition of ancient and archaeological materials. For AAM's guidelines, see *Standards Regarding Collections Stewardship*, AM. ALLIANCE OF MUSEUMS, <http://www.aam-us.org/resources/ethics-standards-and-best-practices/characteristics-of-excellence-for-u-s-museums/collections-stewardship> (last visited Jan. 2, 2013). For AAMD's guidelines, see *Position Papers & Reports*, ASS'N OF ART MUSEUM DIRECTORS, <http://aamd.org/papers/> (last visited Jan. 2, 2013).

9. See ART LOSS REGISTER, <http://www.artloss.com/en> (last visited Feb. 16, 2013).

not acquiring stolen works of art? The answer depends, I would argue, on how well the provenance is documented, which, in turn, hinges on the research process. Nearly every object that the MFA has deaccessioned or come to a settlement over—nearly every object we acquired to which we did not have good title—had only the word of the dealer or donor as its source of provenance information at the time of acquisition. In other words, there was no paper trail, no proof of legal export or import, and little or no publication or exhibition history.

The life-stories that accompanied these works of art have ranged from the credulity-stretching to the mundane. For example, when pressed for information about the provenance of the *Weary Herakles*, the dealer explained to the MFA that the work was undocumented because it had belonged to his mother.¹⁰ He stated that just after World War II, she was owed a large sum of money by a German art dealer. Being unable to pay her, the dealer was forced to give her works of art instead, even though she did not want them. This included the *Herakles*. By the time the MFA made its inquiry, he reported, his mother had passed away and her papers had been confiscated by authorities in Iran. On the other hand, the embroidery from Trent was said simply to belong to a private collector in Italy, who had inherited it along with a number of other antique objects, and, according to the dealer, “he was unable to find any information specifically referring to this piece.”¹¹ Stories like these, whether credible or not, can be impossible to prove or disprove without further documentation.

By re-examining the MFA’s past mistakes, we have learned that the word of the dealer or donor should not normally constitute an object’s sole provenance documentation; more investigation on the part of the Museum is usually required. For many minor objects, it is not reasonable to expect an extensive paper trail, and it is often true that works of art descend in families without a documented succession of ownership. It is rare, however, that a significant work of art appears on the market with no documented history

10. Information provided by Mohammed Yeganeh to the MFA (MFA Curatorial files 1981.783).

11. Letter from Arturo Grassi to Gertrude Townsend (Oct. 20, 1946) (MFA Curatorial files 46.1198).

whatsoever. Moreover, any object that did not originate in the United States has to have been imported and, it follows, exported from another country at some point in its history, and there should be some record of this.

In order to keep track of what is known (or knowable) about a potential acquisition, the Museum of Fine Arts has implemented a system that works through questions of provenance, export, and import on detailed questionnaires. These questionnaires are required for nearly every acquisition and incoming loan, regardless of age or materials. Curators are asked not only what they know about the object's history, but also *how* they know it: what do the customs declarations state; is the object accompanied by an export permit; has it been published; are there marks or labels on the verso, frame, or underside? The questionnaires ask the curator to summarize any relevant legislation (such as laws governing the export and import of cultural property, The Native American Graves Protection and Repatriation Act, or NAGPRA, among others) that could affect the Museum's ownership of the object. Finally, based on the answers provided, and the Museum's policy not to acquire anything known to have been stolen, illegally imported or illegally exported, the curator is asked to justify the acquisition. This process of documentation, research, and analysis must be completed before the acquisition is considered by the administration and approved by the Board of Trustees—and, ideally, before the object is even brought into the building.

Completing the questionnaires is the way we seek not to repeat the mistakes of our past; the process ensures diligence, a consideration of a variety of risk factors, and in particular, an impetus to conduct our own research, beyond the provenance a dealer or donor provides. This research often yields surprising results. For example, in 2011 the MFA was considering an exquisite, seventeenth-century pendant, which appeared at first to be a relatively low-risk acquisition. It was offered for sale at the annual European Fine Art Fair (TEFAF) in Maastricht, by the reputable dealer S. J. Phillips of London. The pendant is made of a double-sided *Gnadenpfennig*, a German medal, surrounded by a delicate, enamel frame. Pieces of jewelry can be difficult to trace, and are rarely accompanied by anything other than the vaguest of provenance information. This unique pendant, however, belonged

to Melvin Gutman, an American jewelry collector, who sold his collection at Sotheby Parke-Bernet in 1969. Using the Gutman collection sale catalogue as a starting point, we learned that the pendant had been sold publicly from the collections of the dealers Jacob Hirsch (Lucerne, 1957) and Joseph Brummer (New York, 1949), who in turn had acquired it in 1947 from Berry-Hill Galleries, New York. An Art Loss Register certificate indicated that no claims for the pendant had been registered with that firm.

There was, however, a significant red flag in the provenance. All three auction catalogues indicated that the pendant had come from the “Museum of Gotha, Saxony,” though without dates or specific information.¹² Generally speaking, European museums do not deaccession works of art as American museums do, and Gotha’s Schlossmuseum (run by the Stiftung Schloss Friedenstein) is known to have endured considerable losses during World War II. The MFA checked the work against the German database Lost Art, maintained by the Koordinierungsstelle Magdeburg, without result¹³; we would also require a standard warranty from the dealer. Nevertheless, we could not be certain that we could take title to the object without first contacting the Gotha museum, to ascertain when and how the pendant had left its collection. Keeping the dealer apprised of our concerns, we put the acquisition on hold and wrote to Gotha. In response, we received pages from a 1987 publication that illustrated the pendant as a World War II loss from Gotha’s medals cabinet.¹⁴ Presented with this evidence, we were unable to proceed with the acquisition. But the story has a happy, or at least satisfactory, ending: Phillips graciously returned the pendant to Gotha in 2011 (with the Art Loss Register as intermediary), and the MFA avoided purchasing stolen property.¹⁵

12. April 23, 1949, Brummer sale, Parke-Bernet, New York, lot 686; December 7, 1957, Hirsch estate sale, Hotel Schweizerhof, Lucerne, lot 145; April 24, 1969, Gutman sale, Sotheby Parke-Bernet, New York, lot 66.

13. See *Lost Art Internet Database*, KOORDINIERUNGSSTELLE MAGDEBURG, www.lostart.de (last visited Feb. 16, 2013).

14. WOLFGANG STEGUWEIT, *GESCHICHTE DER MÜNZSTÄTTE GOTHA, VOM 12. BIS ZUM 19. JAHRHUNDERT* 67 (1987).

15. “*Gnadenpfennig*” *Ernsts des Frommen wieder in Gotha*, MAGAZIN GOTHA, <http://www.gotha-info.de/node/639> (last visited Jan. 2, 2013).

This case demonstrates the importance of institutional responsibility. It was up to the MFA not just to recognize and follow up on red flags, but also to conduct its own research. Due diligence cannot be foisted off on others; it can rarely be presumed to be the seller's bailiwick, nor does it take the form of a single task, such as searching one stolen art database or requiring a warranty. Even with a number of assurances in place, as we had with the pendant, the Museum still came very close to purchasing a looted object, which, presumably, we would have needed to return several years later at our own expense having already lost the purchase price and the object itself. The key to avoiding this particular situation was research.

A counter-example to the pendant, demonstrating that research can also make acquisitions possible, is that of a red-figure, Apulian krater from the 4th century BC (figure 1). Since 1979, the MFA had this krater on loan from a private collector, Edythe Shulman.¹⁶ Mrs. Shulman's son inherited it, and generously offered to make the loan a gift to the MFA in 2010. Between 1979 and 2010, the Museum's criteria for accepting ancient works of art changed dramatically. AAMD's guidelines of 2008 stipulate that ancient and archaeological materials must have been legally outside their country of origin by 1970.¹⁷ In addition, the MFA routinely considers the cultural property legislation of source countries, and Italy's Law 1089, establishing state ownership of undiscovered antiquities, dates to 1939.¹⁸ By means of a reciprocal agreement with the Republic of Italy, however, the MFA has since 2006 sought approval from the Ministry of Culture for acquisitions of ancient Italian origin that were not securely documented outside of Italy by 1909.¹⁹ This gives us the opportunity to acquire

16. A. D. TRENDALL & ALEXANDER CAMBITOGLU, *THE RED-FIGURED VASES OF APULIA*, VOL. 1: EARLY AND MIDDLE APULIAN 381-82, cat. no. 172, pl. 130, 5 (1978). The artist is known as the Shulman Painter.

17. ASS'N OF ART MUSEUM DIRECTORS, 2008 REPORT OF THE AAMD SUBCOMMITTEE ON THE ACQUISITION OF ARCHAEOLOGICAL MATERIALS AND ANCIENT ART 6 (2008).

18. Legge 1 giugno 1939, n. 1089 (It.).

19. *Italian Ministry of Culture Agreement*, MUSEUM OF FINE ARTS BOS., <http://www.mfa.org/collections/art-past/italian-ministry-culture-agreement> (last visited Feb. 22, 2013). This agreement has allowed the MFA to borrow

archaeological materials with the full consent of the country of origin. The krater appeared to fall into this category, though at the outset it was far from certain we would be able to accept it.

With the krater, as with the pendant, provenance research proved our initial assumptions wrong. Mrs. Shulman had purchased the vase at one of the Hearst Corporation auctions in 1963. Information provided in the auction catalogue indicated that the krater was “From the Chapter of Durham Cathedral—England.” From this starting point we successfully traced the krater’s ownership to 1869. That year George Waddington died and bequeathed his collection of classical vases (including the krater) to the Durham Cathedral Library, which sold them in 1936 to the dealer John Hunt; Hunt facilitated the krater’s sale later that year to William Randolph Hearst.²⁰ Once we documented that the krater was outside of Italy as early as the nineteenth century (and after confirming that Durham had sold it willingly), the MFA accepted Mr. Shulman’s gift to the Museum, and accessioned the object in January, 2011.

If the Museum had not taken the time to conduct its own research, it is very likely that we would have purchased the Gotha pendant (incorrectly assuming that its public sale history and absence of known claims “cleansed” it) and, lacking further information about the krater’s provenance, we may have declined the gift. Both outcomes would have been regrettable. It is not always possible to establish an ownership history as lengthy or as well-documented as those of each of these two objects; however, if

extraordinary works of art from Italy for the exhibitions “Titian, Tintoretto, Veronese: Rivals in Renaissance Venice” (2009) and “Aphrodite and the Gods of Love” (2011). The MFA has also borrowed the statue of *Eirene (Peace)* from Palombara Sabina through the Soprintendenza per i Beni Culturali di Lazio (from 2006 until 2010) and the Capitoline *Brutus* through the Sovrintendenza ai Beni Culturali di Roma Capitale – Musei Capitolini (in 2013).

20. The provenance of the krater can be found online at *Mixing Bowl (calyx krater)*, MUSEUM OF FINE ARTS BOS., <http://www.mfa.org/collections/object/mixing-bowl-calyx-krater-154113> (last visited Mar. 23, 2013). Invaluable assistance in the research process was provided by Alastair Fraser, Acting Assistant Librarian, Durham Cathedral Library; Jana Seeley, Curator, Hearst Castle; and Brian O’Connell of the Shannon Heritage Trust.

we had not asked the right questions, we would certainly never have learned more about either object. Moreover, while conducting the research took some effort, it was not a significant imposition on staff time, since it involved library research and follow-up inquiries to colleagues in the field. Raising the initial questions, however, took no time, and this was the critical step.

The Museum's objective in implementing a system of provenance questionnaires and of requiring research on the part of curatorial staff before an acquisition is made is not to eliminate risk completely, since this is not possible. Nor is the purpose to slow or stop our collecting activities. The overarching goal is to increase our diligence so that the curatorial staff, administration, and Board of Trustees can make informed decisions about the Museum's acquisitions. The MFA may accept certain potential risks, or choose not to, but it will do so knowingly and transparently. By proceeding in this manner, the Museum of Fine Arts, Boston, continues to build its collection in a responsible way. We strive to ensure that the extraordinary works of art we acquire today will remain on view for the benefit of future generations of scholars and the public.

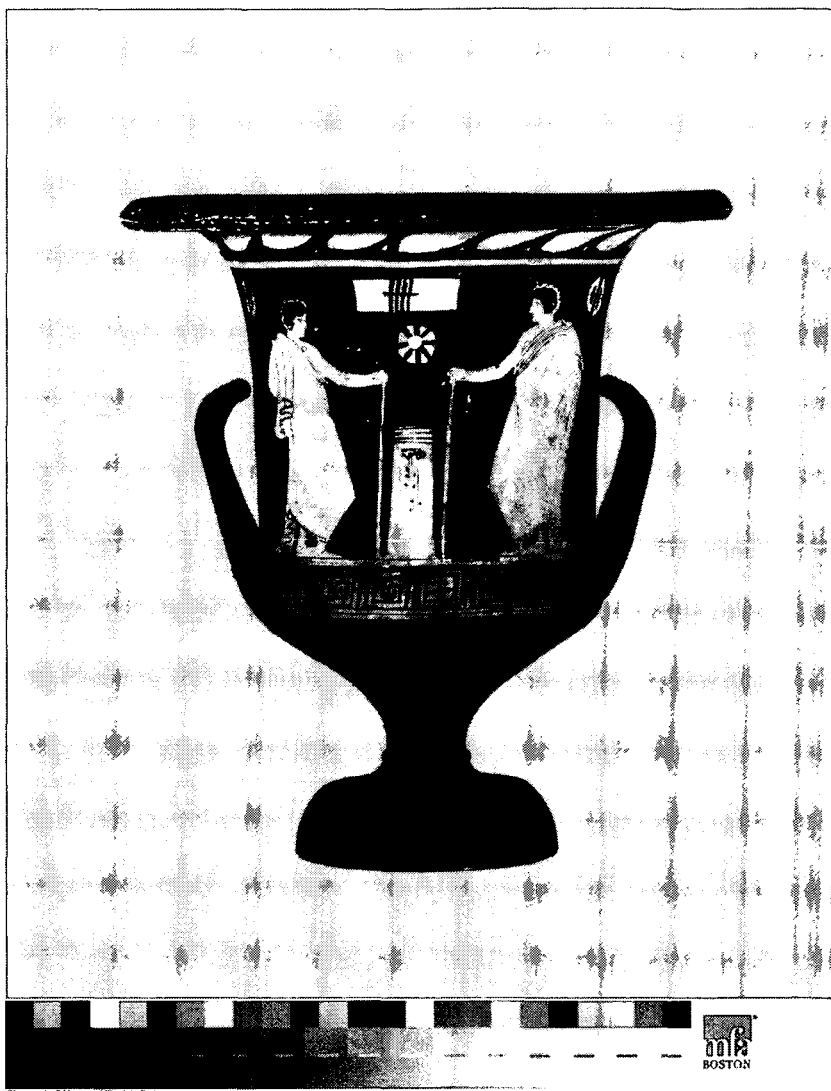


Figure 1: Apulian krater from the 4th century BC.
Photography © Museum of Fine Arts, Boston.

